

# MONTANA MINING ASSOCIATION

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RECEIVED

August 20, 2012

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DEQ  
Planning Division

Mr. George Mathieus  
Administrator  
Planning, Prevention & Assistance division  
Montana Department of Environmental Quality  
1520 East Sixth Avenue  
Helena, MT 59620

RE: Comments of the Montana Mining Association on Draft Circular 12 (v. 6.3), Draft Rule (v. 7.3) and Carrying Out a Substantial and Widespread Economic Analysis for Individual Nutrient Standards Variances and guidelines for Determining if a Waste Water treatment Facility Can Remain at a Previous Variance concentration (v. 7.1).

Dear Mr. Mathieus:

In view of the time and effort expended by the Department staff and the stakeholders in creating the above-referenced proposal, this is a difficult letter to prepare. Unfortunately, because the Montana Mining Association believes the proposal contained in the referenced material is not congruent with the underlying legislation and because several crucial issues remain unaddressed, we are unable to lend support to the proposal. Although the implication of our lack of support, i.e., further delay in the process, is unfortunate, we simply cannot lend our support to such a deeply flawed product.

The Montana Mining Association is a trade association of mineral developers, producers, refiners and vendors in the State of Montana. The mining industry is a major employer and taxpayer in Montana and we believe the continued viability and growth of our members' operations are significant factors in the economic health of our state and its citizens. That being said, we recognize the need for common sense environmental regulation and in fact support reasonable regulation of our industry.

Because we do not view the Department's proposal as consistent with the underlying statute and because important issues have not been addressed, we cannot conclude the proposed scheme of regulation is reasonable. We cannot support it and would recommend the Department seriously

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consider the comments of the various concerned parties, not only our's, but also those of the Western Environmental Trade Association and the Montana Petroleum Association.

As a starting point of our analysis, we would submit that the regulation of nutrient discharge must be consistent with and moreover, pursuant to, the provisions of SB 367 enacted by the 2011 Montana Legislature and the gist of which is codified at section 75-5-313, MCA. The title of the legislation is instructive, at least up to a point: "An act authorizing the Department of Environmental Quality to use individual, general and alternative nutrient standards variances to establish permit limits for point source discharges to surface waters." It is our position that upon examination of the operative portion of the law (and not just the title of the bill), that the Department is not only "authorized" but in fact directed to use "nutrient standards variances to establish permit limits for point source discharges to surface waters." See Section 15-5-313, MCA, which is clearly and unambiguously cast in the imperative rather the permissive.

We believe the statute directs the Department to issue a variance upon the demonstration of economic impacts or because the current state of technology will not meet the numeric standard. We applaud the Department for developing a statewide economic analysis that demonstrates significant and widespread economic harm from implementing the numeric standards. The Department's statewide analysis acknowledges that "advanced treatment technologies for removing nutrients will result in significant widespread economic impacts" as directed by SB367. However, we would respectfully remind the Department that SB 367 removed from the statute the authorization of the Department to "consider relevant guidance of the United States environmental protection agency as pertaining to analysis of economic impacts from water quality standards." The removal of that language clearly and unambiguously directs the Department not to consider EPA guidelines in determining economic impact. We would respectfully submit that use of the 1995 United States EPA "Interim Economic Guidance for Water Quality Standards Workbook "for determining qualification for the general variance process" is precisely what the statute precludes the Department from doing. The EPA's guidance appears to rely on corporate-wide rather than individual facility economics, and this is an unacceptable approach for Montana's industry. The economic test for individual variances should rely on the statewide economic analysis.

The proposal does not address how non-degradation or TMDL standards are affected by the variance process. Without those key pieces of water quality regulation being taken into account, the proposal is inadequate.

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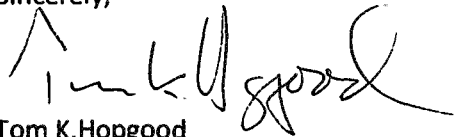
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We think the recent draft MPDES permit for the Drumlummon Mine illustrates a significant issue with the application of non-degradation to nutrients. The stated effluent limit for nitrogen of 0.3 mg/L in that permit is more than an order of magnitude below the limits of technology treatment level.

What this means in the context of the Department's proposal is, at the risk of gross understatement, that permit requirements resulting in treatment requirements that cannot be reasonably met with current cost-effective technology will severely limit potential new projects or development. Adding extremely low numeric standards for nutrients will create additional problems with 303(d) listings and TMDLs. The sole reliance on numeric values for standards without taking into consideration a weight of evidence approach and confirmation of biological harm will limit ability for Montana to have reasonable development and future economic growth.

For these and the reasons set forth in comments from other concerned parties, we would respectfully suggest the department reconsider its approach to this difficult yet important issue.

Sincerely,



Tom K. Hopgood  
Executive Director  
Montana Mining Association